

dismissal of the City and this suit against the City only. The parties stipulate and agree that each party shall bear its or their own costs and attorneys fees.

3. On March 12, 2020, the City paid to NGM their portion and satisfied their terms of the settlement on behalf of and in consideration for dismissal of the suit by Defendants/Cross Plaintiffs against the City. **[Exhibit B]**.

4. The Parties were in the process of working on a Global Settlement Agreement and Liquidated Agreement, which have since been on hold as Defendants/Cross Plaintiffs asked for new payment terms to NGM, outside of and different than the Mediated Settlement Agreement terms. That dispute is ongoing.

5. The City provided the Stipulation of Dismissal to all counsel. Plaintiff NGM is agreeable to the filing of the Stipulation of Dismissal. The City worked on a Settlement, Release and Liquidated Agreement based on the Mediated Settlement Agreement terms. However, based on Defendant/Cross Plaintiff's attempts to change the mediated settlement terms between it and Plaintiff NGM, Defendant/Cross-Plaintiff requested a mutual release. The City presented a revised Mutual Settlement and Release Agreement for Plaintiff NGM and Defendants/Cross-Plaintiffs Benchmark, et al. to execute prior to the filing of the Stipulation, but has not heard back from Defendants/Cross-Plaintiffs Benchmark. However, there is a general agreement to proceed with the dismissal and settlement of the time of this filing. The City anticipates the Mutual Settlement Agreement to be completed by the end of this week.

6. The City requests the Court issue an order dismissing the claims against the City with prejudice in accordance with this stipulation, that each party bear its own costs and attorneys' fees and that all pending motions and matters before the Court in this claim be dismissed in a final order.

Respectfully submitted,
DENTON NAVARRO ROCHA BERNAL & ZECH
A Professional Corporation
2517 N. Main Avenue
San Antonio, Texas 78212
210/227-3243
210/225-4481 Fax
lfdenton@rampagelaw.com
cmrodriguez@rampagelaw.com

By: /s/ Clarissa M. Rodriguez
LOWELL F. DENTON
State Bar No. 05764700
CLARISSA M. RODRIGUEZ
State Bar No. 24056222
Attorneys for City of Pleasanton

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served upon the below named individual(s) as indicated, and according to the Federal Rules of Civil Procedure on this the 13th day of April, 2020.

James D. Cupples
Sonia M. Mayo
CUPPLES & ASSOCIATES, PLLC
700 Gemini Ave., Suite 200
Houston, Texas 77058

E-File Notification

Edgar Garcia
E. GARCIA LAW, PLLC
Brookhollow Atrium Building
1000 Central Parkway North, Suite 100
San Antonio, Texas 78232

E-File Notification

/s/ Clarissa M. Rodriguez
CLARISSA M. RODRIGUEZ

EXHIBIT A

MEDIATION SETTLEMENT AGREEMENT

Full Day Mediation: Monday, February 24, 2020, at 9:00 a.m.

Case No. 19-221-FB; NGM Insurance Company v. Benchmark Utility Contractors, Inc., Benchmark Farms and Ranches, Inc., Daniec Land & Cattle, Inc., and Paul A. Daniec v. The City of Pleasanton, Texas

Our File No. 5067-699

See attachment A incorporated in this agreement.

This agreement shall be enforceable as a Rule 11 Agreement.

This agreement shall be binding on all parties and enforceable pursuant to the ADR provisions of the Texas Civil Practice and Remedies Code.

If one or more disputes arise with regard to the interpretation of this Agreement or any of its provisions as to the content or drafting of a formal order or Judgment, or any substantive dispute arising prior to entry of a Decree (including as to matters that arise for the first time after this Mediated Settlement Agreement is signed by the parties, their attorneys and the mediator), the parties agree to submit said dispute(s) to JOHN J. SPECIA, JR., who shall act as Arbitrator, regarding said disputes and whose decision shall be binding on the parties, and the parties shall share the costs of same as assessed by the Arbitrator, and shall pay such fees upon demand by the Arbitrator.

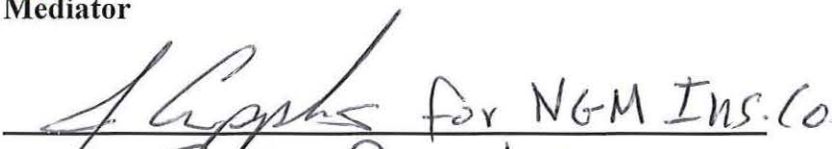
SIGNED and AGREED to this 24 day of February, 2020.

Signature:



John J. Specia, Jr.
Mediator

Signature:

Printed Name:


James Cupples
Attorney for NGM Ins. Co.

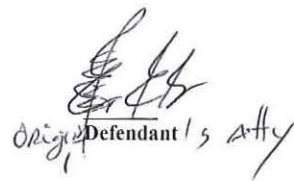
Initials:


Atty for Plaintiff


Plaintiff

Mediator


Atty for Defendant


Original Defendant's Atty

Title: Mediation Settlement Agreement

Signature: 

Printed Name: Clarissa M. Rodriguez

Title: Attorney for City of Pleasanton

Signature: 

Printed Name: Edgar Garcia

Title: Attorney for Defendants

Signature: _____

Printed Name: _____

Title: _____

Signature: _____

Printed Name: _____

Title: _____

Signature: _____

Printed Name: _____

Title: _____

Signature: _____

Printed Name: _____

Title: _____


Signature: _____

Initials/Block: 
Atty for Plaintiff

Plaintiff

Mediator


Atty for Defendant


Defendant's Atty

Attachment A:

NGM v. Benchmark, et al. vs. City of Pleasanton - Mediation Term Sheet - 2/24/20

Parties agree to the following terms:

1. City of Pleasanton agrees to pay NGM Ins. Co. \$40,000.00, payable within ten (10) days.
2. Benchmark and all other original indemnitor Defendants agree to pay NGM Ins. Co. \$90,000.00, payable as follows:
 - a. \$30,000.00 in 30 days from the date of this agreement;
 - b. \$30,000.00 in 90 days from the date of the agreement; and
 - c. \$30,000.00 in 150 days from the date of this agreement.
3. The settlement amount of \$90,000.00 between NGM, Benchmark and all other indemnitor Defendants will be memorialized in a Liquidating ~~and Guarantee~~ Agreement, and shall be secured by an Agreed Judgment in favor of NGM Ins. Co. against Benchmark and all other indemnitor Defendants in the amount of \$165,000.00. NGM agrees not to abstract, enforce, nor collect on the judgment as long as there is not a default in payment by Benchmark and the other indemnitor defendants. *EB*
CUR
7/2
4. Notice of default in payment to be given to Benchmark and counsel Edgar Garcia in writing. If default is not cured within 10 days of notice, NGM shall be entitled to abstract, enforce, and collect on the full amount of the judgment (\$165,000.00), with all credits properly applied.
5. This agreement is subject to further memorialization.
6. The parties shall cooperate in the preparation of Mutual Releases and a Stipulation of Dismissal to be executed within 45 days of the date of this agreement. The mutual releases shall be contingent and subject to the satisfaction by the City of Paragraph 1 and subject to the satisfaction of the Benchmark indemnitor Defendants of Paragraph 3 of this Term Sheet.

Initials:

FC
EB
CUR

EXHIBIT B

THIS CHECK IS NOT AUTHENTIC UNLESS IT CONTAINS A BLUE TO GREEN BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WATERMARK.



Texas Municipal League
Intergovernmental Risk Pool
Joint Self Insurance Fund
1821 Rutherford Lane
Austin, TX 78754
(512) 491-2300

Frost Bank
Parkdale

88-2322/1149
59

Date	Number
------	--------

03/12/20 09023907
LB0000000102967

Amount

\$*****40,000.00

Pay FORTY Thousand Dollars and ZERO Cents

To NGM Insurance Company
55 West St.
Keene, NH 03431

[Signature]

[Signature]
Void After 90 Days

SIGNATURE HAS A COLORED BACKGROUND • BORDER CONTAINS MICROPRINTING

⑈09023907⑈ ⑆114923222⑆ 29 9990348⑈

CLAIM NUMBER INVOICE NUMBER	PAYMENT FOR	FOR THE PERIOD	AMOUNT	ADJUSTER LINE CATEGORY
LB0000000102967	NGM Insurance Compan		40,000.00	hwhatley BI Liability